FEB 3 1941
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 743

JAMES F. McKAY, et al.,
Petitioners,

vs.

RETAIL AUTOMOBILE SALESMEN'S LOCAL UNION #1067, et al., and HOWARD AUTOMOBILE COMPANY, a corporation,
Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of California
and
Brief in Support Thereof.

C. FENTON NICHOLS,
Attorney for Petitioners.

I. M. PECKHAM,
SOL A. ABRAMS,
333 Montgomery St., Rm. 605,
San Francisco, California.
Of Counsel.

January 30, 1941.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

Subject Index

	Page
PETITION FOR WRIT OF CERTIORARI	1
Summary statement of matter involved	2
Proceedings below	4
Opinions below	5
Basis of Supreme Court's jurisdiction	5
Raising of Federal Question	7
Questions presented	9
Reasons for allowance of writ	11
Substantial character of questions	14
Conclusion	14
BRIEF IN SUPPORT OF PETITION	25
Specification of errors	25
Summary of Argument	26
Argument	29
I(A). The decision of the Court below deprives petitioners of their right to self-organize without employer interference in violation of Wagner Act and Due Process Clause of XIV Amendment	29
Employees' right to freely self-organize is fundamental	29
Employees' right to freely self-organize is recognized by:	
Railway Labor Act	32
Norris-La Guardia Law	32
Wagner Act	33
California Labor Code	33
Employees' right freely to self-organize a property right	36

Page

I (B). The Norris-La Guardia Law guarantees the employees' right of free self-organization 32

I(C). State may not deprive employee of right freely to self organize without due process of law 37

Decision of court below does deprive petitioners of that right (Point (f)) 38

II(A). Petitioners adequately invoked right 39

II(B). The automobile business is an interstate business 43

III. Employees have the right though employer not in interstate commerce 43

IV. Certification by Labor Board unnecessary to assertion of right 45

V. Employees representing only a part of the employees or crafts employed in a plant have the right 49

VI. Employees have the right though they have no outside affiliation 51

VII. Employees have the right though their organization has no constitution, by-laws, pledges or rules 53

VIII. A state may not erect a burden of proof or pleading against employees exercising the right 54

IX. State court's decision purporting to find and recite material facts, unsupported by record, is a deprival of liberty and property without due process 58

X. Attempt of state court to privilege employer coercion of employees in concert with an outside labor organization, while withholding the privilege from all other labor organizations denies them equal protection 59

Pages

CONCLUSION 64

APPENDIX 15

Statutory provisions involved 15

Norris-La Guardia Law, Sections 2, 3 ..... 15, 16

Wagner Act, Sections 1, 2, 7, 8(1) 17, 18, 21

Cal. Labor Code, Sections 920, 921, 922, 923, 1110 ..... 22, 24

Table of Authorities Cited

Pages

CASES

Abbey Co. v. S. Mateo County, 167 Cal. 434 41
Ackerman v. Scheutzverein, 60 S. W. (Tex.) 366 54
Amalg. Workers v. Edison Co., 309 U. S. 261 ..... 11, 31
Amer. Foundries v. Tri-City Council, 257 U. S. 184 30
Am. Furniture Co. v. B. of Teamsters, 222 Wis. 338, 268 N. W. 250 38
Appalachian Power Co. v. Labor Board, 93 Fed. (2) 985 56
Assoc. Press v. Labor Board, 305 U. S. 103 33

Ballston Co. v. Labor Board, 98 Fed. (2) 758 ..... 48, 50, 52, 53
Bank v. Anderson, 269 U. S. 341 ..... 12, 41
Brinkerhof Trust Co. v. Hill, 281 U. S. 673 43

Carter v. Texas, 177 U. S. 442 ..... 11, 41
Cissna v. Tennessee, 246 U. S. 289 ..... 12, 40
Coppage v. Kansas, 136 U. S. 1, 14-15 ..... 29, 37, 61

Donnelly v. Garment Workers Union, 21 Fed. Supp. 807 52
Donnelly Co. v. Garment Workers Union, 99 Fed. (2) 309 ..... 50, 52

Ebbinghousen v. Worth Club, 4 Abb. N. C. 300 54
Edison Co. v. Labor Board, 305 U. S. 197 ..... 13, 44, 46, 48, 49, 54
Erie R. Co. v. Purdy, 185 U. S. 148 ..... 11, 41

Grand Trunk v. Lindsay, 233 U. S. 42 40
Green Bay Canal Co. v. Patten Co., 172 U. S. 58 ..... 12, 40

Internat. Assn. v. Labor Board, 61 S. Ct. 83 ..... 52, 60, 62

Koepple v. Morrison, 84 Cal. App. 137 41

Labor Board v. Abell Co., 97 Fed. (2) 951 55
Labor Board v. Bell Oil Co., 98 Fed. (2) 870 ..... 55, 58
Labor Board v. Bradford Assn., 310 U. S. 318 44
Labor Board v. Columbian Co., 306 U. S. 292 ..... 48, 54, 58
Labor Board v. Del. Ferry Co., 90 Fed. (2) 520 49
Labor Board v. Fainblatt, 306 U. S. 601, 604, 608 ..... 13, 44
Labor Board v. Falk Corporation, 102 Fed. (2) 383 13
Labor Board v. Fansteel M. Corp., 306 U. S. 240 ..... 33, 52
Labor Board v. Griswold Co., 106 Fed. (2) 713 ..... 11, 49, 50

Pages

Labor Board v. Hopwood Co., 98 Fed. (2) 97 ..... 50, 52
Labor Board v. Jones & Laughlin, 301 U. S. 1 ..... 8, 11, 13, 30, 44
Labor Board v. Link-Belt Co., 61 Sup. Ct. 358 ..... 13, 51, 57
Labor Board v. Lion Shoe Co., 97 Fed. (2) 448 52
Labor Board v. Piqua Co., 109 Fed. (2) 552 ..... 12, 48, 50
Labor Board v. Remington Rand, 94 Fed. (2) 862 49
Labor Board v. Sterling Motors Co., 109 Fed. (2) 194 ..... 34, 47, 48, 50, 51, 53, 55
Labor Board v. Waterman SS. Corp., 309 U. S. 206 13

M. K. & T. Co. v. Wulf, 226 U. S. 570 40
Madigan v. Hale Co., 90 Cal. App. 151 41
McCabe v. Santa Fe Ry. Co., 235 U. S. 151 ..... 13, 62
McCulloch v. Maryland, 4 Wheat. 316 56
McKay v. Auto Salesmens Union, 89 Pac. (2) 426 5
McKay v. Auto Salesmens Union, 90 Pac. (2) 113 5
McKay v. Auto Salesmens Union, 100 Cal. Dec. 347, 106 Pac. (2) 403 5
McLaughlin v. Wall, 105 Pac. (Kan.) 33 54
Metropolitan Market v. Lyons, 100 Cal. Dec. 397, 106 Pac. (2) 414 5
Midland Co. v. Rudneck, 188 U. S. 265 41
Moore v. Moore, 47 N. Y. 467 57
Moore v. Pleasant Constr. Co. (Ariz. 1937) 72 Pac. (2) 573 43
Morrison v. California, 291 U. S. 82 56

Nixon v. Condon, 286 U. S. 73 ..... 13, 62
N. Ca. Ry. Co. v. Storey, 268 U. S. 291 5
North Dakota v. Hanson, 215 U. S. 515 56

People v. Assoc. Oil Co., 211 Cal. 93 41
People v. Crowl, 28 Cal. App. (2) 299 41
People v. Gates, 43 N. Y. 40 57
People v. Tilken, 34 Cal. App. (2) 743 56

Schaefer v. Pharmacists Union, 100 Cal. Dec. 391, 106 Pac. (2) 403 5
Seaboard Air Line v. Duvall, 225 U. S. 477 40
Sinnott v. Davenport, 22 How. 227 56
So. Cal. Co. v. Alberti, 58 Cal. App. 84 41

Pages

T. & N. O. Ry. v. Ry. Clks., 281 U. S. 548 ..... 11, 12, 30, 32, 36, 37, 45

U. S. v. Williams, 175 Fed. 274 58
U. S. v. Williams, 189 Fed. 915 58
U. S. v. Williams, 200 Fed. 538, 541 58

Western R.R. v. Henderson, 279 U. S. 639 56
Wong Tsich Wye v. Nagle, 33 Fed. (2) 226 58
Virginian Ry. Co. v. Federation, 84 F. (2) 641 ..... 11, 36
Yamataya v. Fisher, 189 U. S. 86 58
Yick Wo v. Hopkins, 118 U. S. 356 63

STATUTES REFERRED TO

United States Statutes—
Fourteenth Amendment 29
Norris-La Guardia Law (47 Stats. 70)
Section 2 ..... 9, 26, 32, 51
Section 4 26
Railway Labor Act (44 Stats. 577) 32
Wagner Act (49 Stat. 449)
Section 1 ..... 13, 26, 27, 33, 44
Section 2 ..... 13, 27, 44, 45
Section 7 ..... 9, 11, 26, 27, 33
Section 8 ..... 9, 11, 26, 33, 64
18 U. S. C. A. Section 51 38
28 U. S. C. A. Section 344 14
36 Stats. 1156, Secs. 236, 237 14
R. S. Sec. 709 14

California Statutes—
Cal. Code of Civil Procedure
Section 405 7
Section 452 ..... 8, 56
Section 1875 42
Section 1963 (1) 56
Section 1963 (19) 56

Pages

California Labor Code

Section 920 33
Section 921 ..... 10, 13, 29, 33, 38, 59, 62, 64
Section 922 ..... 33, 64
Section 923 ..... 32, 33, 38, 61, 62, 64

Clayton Act, Section 20 36

OTHER AUTHORITIES

2 *Calif. Jur.* Sec. 405, n. 12 7
2 *Calif. Jur.* Sec. 419, n. 14 7
Census of Manufacturers (Dept. of Commerce) 1937 42
Report of U. S. Commissioner of Internal Revenue (1938) 42

In the Supreme Court of the United States

OCTOBER TERM, 1940

No.....

JAMES F. McKAY, et al.,
Petitioners,

vs.

RETAIL AUTOMOBILE SALESMEN'S LOCAL UNION #1067, et al., and HOWARD AUTOMOBILE COMPANY, a corporation,
Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of California.

To the Honorable the Supreme Court of the United States:

Petitioners, all of the plaintiffs named as such in the complaint (R. 1), respectfully pray that a writ of certiorari issue to review the decision herein of the Supreme Court of California (the Court of last resort in that State) filed October 14, 1940, and which became final November 14, 1940.

A. SUMMARY STATEMENT OF MATTER INVOLVED.

Petitioners as plaintiffs sued to enjoin defendant Retail Automobile Salesmen's Union, and those acting in concert with it, from picketing the business of petitioners' employer, the Howard Automobile Company, and advertising it as unfair to labor. (R. 1-7)

The complaint alleged:

Petitioners are all the salesmen of the Howard Company, a corporation engaged in the auto selling and repairing business in San Francisco and elsewhere, and are all satisfied, and the company is satisfied, with their terms, pay, hours and working conditions, and want to continue therein, and the company is satisfied with their work and wants to continue their employment. (R. 2)

In May, 1937, petitioners united and organized and designated three of themselves a committee to negotiate with the company regarding pay, wages, hours and working conditions, in accordance with the Wagner Act, and notified the company and the Regional Director of the Labor Board of their choice of bargaining representative, and the company recognized the committee as such for all the sales force. (R. 4) No labor dispute or controversy over terms or conditions of work or association or representation in negotiating terms or conditions of work existed between petitioners and the company. (R. 4, 5)

None of the petitioners had or has any dispute with the company over wages, hours or working conditions, or otherwise. (R. 5) None was or is on strike.

(R. 5) There was and is no discussion or negotiations concerning terms, hours, wages, or working conditions. (R. 5) No petitioner is a member of any defendant union or wants or intends to become such. (R. 5) No petitioner has any agreement with defendant unions or other labor organization, nor has requested any of the unions to act for him as his bargaining agency. (R. 5)

Defendant unions have rules and by-laws enforceable by fines and penalties forbidding their members to cross picket lines or do business with firms under picket, and the company employs members of defendant unions. (R. 5) Pursuant to such rules, picketing the plant compels all the members of each union not to visit, deliver to, or receive goods from, do business with, or work for the company. (R. 5)

The Salesmen's Union asked petitioners to join and petitioners refused, and in consequence the union picketed and will remain on picket until the company makes petitioners join the union or discharges them. (R. 5-6)

The picket closed down the plant, stopped all work, destroyed its business, and the company will, unless the union is restrained, discharge all petitioners or require them to join the union. (R. 6) None of the pickets were employees of the company. (R. 6) The San Francisco Labor Council "okehed" the picket, put the company on its "We don't patronize list" and appointed a Board of Strategy to exert pressure and coercion on the company and petitioners, respectively,

to sign a closed shop contract and join the union. (R. 6)

On return of the preliminary restraining order, (R. 8-10), defendants elected to show cause on matter of law alone, and filed a demurrer (R. 10-12) and motion to strike. (R. 12-13) The Superior Court sustained the demurrer and dissolved the restraining order and denied a temporary injunction, two distinct orders under California practice. (R. 14, Opinion, R. 14-22) Petitioners appealed from the order denying a temporary injunction. (R. 23)

The case was transferred to the District Court of Appeal. (R. 24) That Court reversed the judgment (Opinion and Judgment, R. 102-117) and denied a rehearing (Opinion and Judgment, R. 117-122).

The Supreme Court granted a hearing before the Supreme Court after decision of the District Court of Appeal, and transferred the case to itself. (Order R. 25) The Supreme Court affirmed the judgment of the Superior Court October 14, 1940 (3 judges dissenting), (Opinion and Order, R. 25) and denied a rehearing November 9, 1940, (3 judges dissenting). (Opinion and Order, R. 101) The remittitur went down November 14, 1940 (Original Tr. p. 100), and the judgment became final on that day.[1] The decision of the Supreme Court of California is the law of the case, and lays down a rule conclusive on us and

---

[1]Rule XXX of California Supreme Court, Sec. 1:

"Unless otherwise specially ordered, or a rehearing be granted, judgments of the Supreme Court in bank become final at the end of the thirtieth day after the date of pronouncement."

on the Courts of California on any application for a final injunction. It came at a time when all opportunity to add to or correct the record had long since passed. (R. 14) It left nothing for the Courts to do but dismiss petitioners' case. (*N. Ca. R. Co. v. Story*, 268 U. S. 291 and cases cited)

B. OPINIONS BELOW.

The opinion of the Superior Court (R. 14-22) is unreported.

The opinions of the District Court of Appeal (R. 102-122) are reported in 89 Pac. (2) 426, 90 Pac. (2) 113, and are not yet reported officially.

The opinion of the Supreme Court (R. 25-79) is reported in 100 Cal. Dec. 347, 106 Pacific (2) 373, and is not yet reported officially.

The opinion of the Supreme Court in the companion cases of *Schaefer v. Pharmacists Union* (R. 79) and *Metropolitan Market v. Lyons* (R. 88) are reported in 100 Cal. Dec. 391, and 397, and in 106 Pac. (2) 403 and 414. They are not yet officially reported.

C. BASIS OF SUPREME COURT'S JURISDICTION.

In their complaint petitioners alleged that their employer was engaged in the automobile selling and repairing business in San Francisco and elsewhere (R. 2) and that petitioners, all its salesmen, united and organized, and designated three of their number a committee to negotiate rates of pay, wages, hours

of labor and other conditions of employment with the company, in accordance with the terms of the Wagner Labor Relations Act, and forthwith notified the company and the Regional Director of the National Labor Relations Board of their choice of a bargaining representative. (R. 4) The company then and there recognized the committee as bargaining agents for the entire sales force, all the petitioners. (R. 4)

The Superior Court disposed of this claim by saying it was not alleged that the company is engaged in interstate commerce so as to bring it within the jurisdiction of that statute. (R. 21)

The Supreme Court of California in affirming the Superior Court's judgment disposed of the point thus: The allegations concerning the National Labor Relations Act need not be considered because

1. It is not alleged that the Labor Board has certified petitioners' organization as a bargaining agent. (R. 40)

2. It is not alleged the company is engaged in interstate commerce. (R. 40)

3. The allegation that the petitioners formed a labor organization "in accordance with the Wagner Labor Relations Act" is a legal conclusion. (R. 40)

4. Petitioners did not show their organization was a freely organized and independent trade union, because

a. Petitioners are only a portion of the employees of a single plant. (R. 40)

b. They have no affiliation with any outside labor organization. (R. 40)

c. They have no constitution, by-laws, pledges or rules. (R. 40)

d. There is apparent unity of interest between petitioners and the employer which negatives the inference that they have a bona fide independent bargaining organization. (R. 40)

Paragraphs 4a to 4d above were surprise rulings based on no evidence at all nor on anything in the record.

D. THE RAISING OF THE FEDERAL QUESTION.

The question was raised in the complaint (R. 2, 4) the first step in the action. (Cal. Code Civil Procedure Sec. 405) The Superior Court ignored it. (R. 21) We appealed.

In California, there is no assignment of errors.

> 2 *Calif. Jurisp.* "Appeal and Error", Section 405, note 12 and cases cited.

Errors are assigned in the appellant's opening brief on appeal.

> 2 *Calif. Jurisp.* "Appeal and Error", Section 419, note 14 and cases cited.

Petitioners so assigned the point in their opening brief.

> "V. Plaintiffs have a vindicable right to self-organization under Federal Statute" (Opening

Brief p. 37) citing *T. & N. O. v. Ry. Clks.,* 281 U.S. 548, 571, further making the point that the picket here was a conspiracy to punish and oppress petitioners for its exercise under 18 U.S. C.A. Section 51.

"VI. Federal Law forbids justification of defendant's action." (Opening Brief p. 40) citing Section 7 of the Wagner Act.

"VII. The automobile business is interstate in character." (Opening Brief p. 43)

Thirty briefs were filed by the parties and the friends of the Court. The cases were argued four times, once in the Court of Appeal and three times in the Supreme Court.

All constitutional considerations were urged as the opinions show. (R. 16-17, 18; 33, 38-9, 40, 43-44, 60, 61-2, 64-5, 68, 70, 71, 72, 73, 105, 106, 107, 112, 113, 118, 119, 120, 121, et seq.)

Finally, in their petition for a rehearing petitioners again urged the point "Freedom of workers to organize is a constitutional right," (citing *Labor Board v. Jones & Laughlin,* 301 U.S. 1) "part of the liberty guaranteed by the XIV Amendment."

Many of the rulings of the Court were shockingly novel, as the dissenters pointed out, were not suggested by either lower Court, ignored settled rules of pleading in California, (e. g. Cal. Code Civ. Proc. 452) came unexpectedly at the end of the proceeding, when petitioners had no right to add to the record,

and supplied a new and unexpected basis for petitioners' claim of denial of Federal rights.

E. QUESTIONS PRESENTED.

1(a). Does not the decision of the California Supreme Court deny to petitioners the fundamental right to self-organize free from employer interference, guaranteed by Sections 7 and 8 of the Wagner Act?

1(b). Is not this right guaranteed by Section 2 of the Norris-La Guardia Law (47 Stats. 70) by necessary implication?

1.(c). Is not this right part of the liberty and property of which the state cannot deprive a person without due process of law under the XIV Amendment?

2. Is the allegation that petitioners "united and organized in accordance with the Wagner Labor Relations Act" a mere legal conclusion?

3. Must the employer be shown to be engaged in interstate commerce before the employee can assert or exercise the right to self-organize without employer interference?

4. Does the right of petitioners to self-organize depend on the Labor Board's certification of petitioners' organization as the proper bargaining unit?

5. Must the self-organizing employees embrace all the workers in a plant before they can assert the right to self-organize?

6. Must the petitioners have affiliation with an outside labor organization before they can assert the right?

7. Must the petitioners show they have a constitution, by-laws, pledges or rules before they can assert the right?

8. Must petitioners "negative" all "unity of interest" between themselves and their employers to assert the right?

9. Does not the act of the Supreme Court of California in purporting to find and recite, on no evidence at all, that petitioners have no constitution, by-laws, pledges, or rules, and that there is an apparent unity of interest between petitioners and their employers, deprive petitioners of liberty and property without due process of law?

10. Does not the decision of the Supreme Court of California, by construction of the unambiguous Section 921 of the California Labor Code, (Appendix) to authorize a labor organization with outside affiliations to coerce petitioners' employer into coercing petitioners to join defendants' organization, while denying to petitioners' organization the same right, deny to petitioners the equal protection of the law under the XIV Amendment?

F. REASONS FOR ALLOWANCE OF WRIT.

The right of self-organization guaranteed by the Wagner Act (Section 7 and Sec. 8, subd. (1)) is a fundamental right.

T. & N. O. v. Ry. Clks., 281 U.S. 548, 568;
Labor Board v. Jones & Laughlin, 301 U.S. 1, 33;
Amalg. Workers v. Edison Co., 309 U.S. 261, 263-4.

According to the last opinion the right is fundamental and is not *given* (though expressly *guaranteed,* Sec. 7, 8 (1)) by the Wagner Act or any other act. If this is true it is a constitutional right. To deprive petitioners of that right is to deprive them of liberty and property without due process of law.

Being claimed under the Wagner Act, it is being claimed under the constitution.

The right to self-organize has been held to be a property right.

T. & N. O. v. Ry. Clks., 281 U.S. 548, 571;
Virginian Ry. Co. v. Federation (CCA-4 1936), 84 F. (2) 641, 644;
Labor Board v. Griswold Co., (CCA-3 1939), 106 Fed. (2) 713, 720.

Adequate assertion of the right is itself a Federal question, not concluded by the State Court's holding.

Carter v. Texas. 177 U.S. 442;
Erie R. Co. v. Purdy, 185 U.S. 148;

Bank v. Anderson, 269 U.S. 341 (State court's ruling on sufficiency of pleading under state law not conclusive).

The specification of right here was sufficient.

Green Bay Canal Co. v. Patten Paper Co., 172 U.S. 58 (allegation in cross-complaint that cross-plaintiff claimed his rights under named Federal Statutes);

Cissna v. Tennessee, 246 U.S. 289.

Basing a decision upon statements and recitals of fact in the opinion of the state's highest Court, with no evidence or facts to support them, is itself a denial of liberty and property without due process of law under the due process clause of the XIV Amendment.

Certification by the Labor Board is not necessary to the existence or assertion of the right.

T. & N. O. v. Ry. Clks., 281 U.S. 548, esp. 557.

The Labor Board has no jurisdiction until the employer violates the right and a complaint therefor has been filed.

Labor Board v. Piqua Co. (CCA-6 1940), 109 Fed. (2) 552, 556.

Here the employer accepted petitioners' organization as an appropriate bargaining unit. (R. 4)

These reasons will be developed in petitioners' brief filed herewith.

The Wagner Act applies not only to Interstat

Commerce but to any business affecting or affected by it.

The Wagner Act (49 Stats. 449, Section 1, Par. 1, Subpar. (c); Section 2, subd. 7);
Labor Board v. Jones & Laughlin, 301 U.S. 1, 34-49;
Labor Board v. Fainblatt, 306 U.S. 601, 604, 608;
Edison Co. v. Labor Board, 305 U.S. 197, 222;
Labor Board v. Falk Corp. (CCA-7 1939), 102 F. (2) 383, 389.

The decision of the state Supreme Court construed Section 921, subdivision (a) of the Labor Code of California (Cal. Stats. 1937 Ch. 90, see Appendix) not to apply to labor organization with outside affiliations, and thus allowed such a labor organization to coerce the employer to coerce the petitioners, while denying to petitioners and similar organizations the same right (R. 55, 83-89), thus denying petitioners the equal protection of the laws.

McCabe v. Santa Fe Ry. Co., 235 U.S. 151;
Nixon v. Condon, 286 U.S. 73.

This was a surprise ruling also.

These are all questions calling for speedy settlement in the interest of correct interpretation of the Wagner Act. They are "important in an orderly administration of the Act".

Labor Board v. Link-Belt Co., 61 Sup. Ct. 358, 360;
Labor Board v. Waterman SS. Corp., 309 U.S. 206.

The decision of the Supreme Court of California was the final judgment of the highest Court of the state of California in which a decision could be had where has been drawn in question petitioners' right title, privilege and immunity specially set up and claimed by petitoners under the constitution and a statute of the United States within Title 28 U.S.C.A. 344 (b), 36 Stats. 1156, Sections 236, 237, R. S. Section 709 as amended.

G. THE SUBSTANTIAL CHARACTER OF THE QUESTIONS.

The nature of the case stated above, and the reasons urged for the granting of the writ in the brief hereto appended demonstrates the substantial character of the questions involved.

CONCLUSION.

It is respectfully submitted that petitioners' Petition for a Writ of Certiorari should be granted to review the ruling of the Supreme Court of California.

Dated: January 30, 1941.

C. FENTON NICHOLS,
Attorney for Petitioners

I. M. PECKHAM,
SOL A. ABRAMS,
Of Counsel.

(APPENDIX FOLLOWS.)